IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 100 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

COMMISSIONER OF INCOME TAX

Versus

N C PATEL

Appearance:

MR AKIL QURESHI for MR RP BHATT for Petitioner

MR RK PATEL for Respondent

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this Court for its opinion under the provisions of sec. 256(1) of the Income-tax ACt,1961 (hereinafter referred to as 'the Act') :

"Whether the Appellate Tribunal has been right in law and on facts in holding that the income of Rs. 1,47,449/- belonged to Smt. Surajben C. Patel Trust and not to the assessee?"

2. Learned advocate Shri Akil Qureshi has appeared for the applicant-revenue whereas learned advocate Shri R.K. Patel has appeared for the respondent-assessee.

3. The assessee is one of the trustees of Smt. Surajben C. Patel Trust. In the course of assessment for the Assessment Year 1980-81, a sum of Rs. 1,47,449/- was added in the income of the assessee, which, according to the assessee, was income of Smt. Surajben C. Patel Trust. According to the assessee, the said income, in fact, belonged to the Trust and the Trust was genuine. The said submission of the assessee did not find favour with the Assessing Officer and the Assessing officer included a sum of Rs. 1,47,449/- in the income of the assessee. Being aggrieved by the inclusion of the said amount in the assessee's income, the assessee filed an appeal before the CIT(A). The appeal was allowed. Being aggrieved by the order passed in the appeal, the revenue had filed an appeal before the Tribunal and the said appeal was dismissed by the Tribunal.

4. The question posed before this Court is whether the Tribunal was right in law and on facts in including the income of Smt. Surajben C. Patel Trust, being Rs. 1,47,449/-, in the income of the assessee.

5. At the time of hearing of this reference, the learned advocates have drawn our attention to the fact that in ITR No. 263 and 296 of 1985, this Court has held that Smt. Surajben C. Patel Trust is a genuine trust. In other words, the said trust should be assessed for the income which the trust had earned.

6. In view of the fact that this Court has finally opined that the Trust was genuine and in the circumstances, in our opinion, the Tribunal was justified in taxing the said income in the hands of the trust on substantive basis. Natural consequences thereof would be that the said income should not be included in the income

of the assessee.

7. In view of the said fact, we are of the view that the Tribunal was absolutely justified in passing the impugned order and we answer the question referred to us in the affirmative, i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(hn) (D.A. Mehta, J.)